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Attorneys for Defendants Ocwen Loan Servicing, LLC, Mortgage Electronic Registration Systems, Inc., CIT Bank, N.A. and Defendant/Counterclaimant/Third-Party Plaintiff Deutsche Bank National Trust Company As Trustee For Indymac Indx Mortgage Loan Trust 2005-AR14, Mortgage Pass-Through Certificates Series 2005-AR14

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

KATRINA PERKINS STEINBERGER, as
Executor of the Estate of Charles A.
Perkins, deceased, and individually,

Plaintiff,

vs.

INDYMAC MORTGAGE SERVICES, a
division of ONEWEST BANK, F.S.B., a
Federally Chartered Savings Bank;
DEUTSCHE BANK NATIONAL TRUST
COMPANY, as Trustee of the INDYMAC
INDX MORTGAGE LOAN TRUST 2005-
AR14; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., a
Delaware Corporation; OCWEN LOAN
SERVICING, LLC, a Limited Liability
Company; KEELEY KRISTINE SMITH,
an Attorney licensed with the Arizona State
Bar; JOHN AND JANE DOES 1-1000,
XYZ CORPORATIONS 1-15; ABC
LIMITED LIABILITY COMPANIES 1-
15; and 123 BANKING ASSOCIATIONS
1-15,

Defendants.

Case No. 2:15-cv-00450-ROS

Hon. Roslyn O. Silver

MOTION FOR ATTORNEYS' FEES

FRCP 54; LRCIV 54.2; A.R.S. § 12-341.01

1 DEUTSCHE BANK NATIONAL TRUST
2 COMPANY, as Trustee for INDYMAC
3 INDX MORTGAGE LOAN TRUST 2005-
AR14, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2005-AR14,

4 Counterclaimant,

5 vs.

6 KATRINA PERKINS STEINBERGER, as
7 Executor of the Estate of Charles A.
8 Perkins, deceased, and individually,

9 Counterdefendants.

10 DEUTSCHE BANK NATIONAL TRUST
11 COMPANY, as Trustee for INDYMAC
12 INDX MORTGAGE LOAN TRUST 2005-
13 AR14, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2005-AR14,

14 Third-Party Plaintiff,

15 vs.
16

17 SAGUARO DESERT TRUST; KATRINA
18 PERKINS STEINBERGER, as Executive
Trustee of Saguaro Desert Trust; M&I
19 MARSHALL & ILLSLEY BANK, a
Wisconsin Banking Corporation;
20 QUALITY LOAN SERVICE
CORPORATION, a California
21 Corporation; RANCHO ALTA VIDA
22 HOMEOWNERS' ASSOCIATION, an
Arizona Non-Profit Corporation; DOE
23 INDIVIDUALS OR ENTITIES 1-10;
24 UNKNOWN HEIRS AND DEVISEES OF
CHARLES A. PERKINS, DECEASED.

25 Third-Party Defendants.
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1 Pursuant to Federal Rule of Civil Procedure 54(d); LRCiv 54.2 and A.R.S. § 12-
2 341.01, Defendants, Ocwen Loan Servicing, LLC, Mortgage Electronic Registration
3 Systems, Inc., CIT Bank, N.A. and Deutsche Bank National Trust Company As Trustee
4 For Indymac Indx Mortgage Loan Trust 2005-AR14, Mortgage Pass-Through Certificates
5 Series 2005-AR14 (“Defendants”) hereby respectfully move for an award of attorneys’
6 fees in the amount of \$116,656.70 against Plaintiff Katrina Perkins Steinberger in her
7 individual capacity and against the Estate of Charles Perkins, jointly and severally.

8 I. INTRODUCTION

9 Under the factors set forth in A.R.S. § 12-341.01 and supporting case law,
10 Defendants are entitled to their attorneys’ fees incurred defending this lawsuit. While
11 Defendants have been burdened with the costs of defending against Plaintiffs’ meritless
12 claims, Plaintiff Katrina Steinberger, who apparently inherited the subject property from
13 her father Charles Perkins, has directly benefited from this litigation. Specifically, she has
14 had the benefit of living in the subject property (worth over \$700,000 and located in
15 prestigious Paradise Valley) without making any mortgage payments or property tax
16 payments since 2008.

17 As this Court pointed out, “[a]t the conclusion of this lengthy litigation, it appears
18 Steinberger’s main theory ... never had a sound legal or factual basis”¹ [and] “...all of
19 Steinberger’s claims fail based on a lack of evidence, lack of a coherent legal theory, or
20 both.”² Through continued dilatory tactics, through misrepresentations to the Arizona
21 Court of Appeals, and through years of litigation, Plaintiffs forced Defendants to jump
22 through procedural hoop after procedural hoop even though *all* the evidence produced
23 supports that DBNTC as Trustee has had the right to foreclose since 2005. For example,
24 early in this litigation, Plaintiffs were shown the original loan documents signed by
25 Charles Perkins, containing a blank endorsement.

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27
28 ¹ See Order on Motion for Summary Judgment (doc. 210), p. 39:20-22.

² See Order on Motion for Summary Judgment (doc. 210), p. 2:1-3.

1 Notably, Plaintiffs never disputed that they stopped making monthly payments
2 towards the subject loan. Plaintiffs never disputed that Plaintiff Katrina Steinberger's
3 father (Charles Perkins) borrowed money in 2005, that Mr. Perkins granted a consensual
4 security interest against the subject property and that Mr. Perkins agreed to make monthly
5 payments towards the subject loan or risk foreclosure. Rather, the entire lawsuit stems
6 from the "conspiracy theory" argument that by examining the inner-workings of the
7 subject mortgage-backed trust, Plaintiffs believed it would reveal that nobody was
8 "entitled to payments" and therefore "nobody" ever had (and never will have) the right to
9 foreclose.

10 **II. SUMMARY OF MAJOR TASKS**

11 Attached to the Declaration of Solomon Krotzer, filed concurrently herewith, is a
12 detailed accounting of all fees requested and the corresponding time spent on each task.
13 Even though Plaintiffs filed this lawsuit more than six years ago, Defendants are only
14 requesting fees from February 2015 until the entry of final judgment on January 23, 2017.
15 Further, Defendants are not requesting fees associated with the prosecution of the judicial
16 foreclosure. Instead, Defendants are only seeking fees related to the defense of Plaintiffs'
17 meritless claims. In summary, defending against Plaintiffs' claims required the following
18 major tasks, amongst other tasks as set forth in the billing entries:

19 **Client Communications:** Undersigned counsel represented defendants MERS,
20 CIT Bank, Ocwen Loan Servicing, LLC and DBNTC as Trustee. At times, each of these
21 parties required separate communications in order to keep each client apprised of the
22 relevant issues and case developments, to keep each client apprised of settlement offers,
23 to discuss possible settlement and make settlement recommendations, to request
24 documents from the clients related to discovery requests, to discuss each client's
25 respective responses to written discovery and obtain verifications, to obtain declarations
26 and otherwise keep the clients apprised of key developments in the litigation.

27 **Communications with Opposing Counsel:** In light of several discovery disputes
28 created by opposing counsel, and in light of inconsistent and untenable legal positions,

1 extensive communication with opposing counsel was required, often in writing. For
2 example, this Court ordered the parties to meet “in person” and undersigned counsel did
3 meet “in person” regarding discovery issues on October 16, 2015 and December 4, 2015.
4 Specifically, these meetings related to Plaintiffs’ position that Defendants were not
5 entitled to review Plaintiffs’ financial documents such as tax returns/bank records,
6 Plaintiffs’ dispute (later withdrawn) concerning the authenticity of loan documents and
7 Plaintiffs’ demand to “inspect” the original loan documents, and similar demands.

8 **Communications with Third Parties:** Plaintiffs issued countless subpoenas to
9 third parties, including: Wells Fargo, JP Morgan Chase, The Northern Trust, Mellon Trust,
10 Goldman Sachs, Credit Suisse, CitiGroup, Brown Brothers, BONYM-Pershing, Barclay’s
11 and since these subpoenas were improper and exceeded the scope of discovery, counsel
12 was required to communicate with these third parties to inform them of Defendants’
13 objections and explain the nature of this case. At times, undersigned counsel received
14 unsolicited phone calls from attorneys from these entities inquiring about the nature of
15 this litigation and why they were being subpoenaed over a loan they had no involvement
16 with.

17 **Contested Removal:** Ocwen removed this case to federal court and undersigned
18 counsel was required to defend Plaintiffs’ motion to remand, which was denied. Plaintiffs
19 attempted to argue that complete diversity did not exist by fraudulently joining an attorney
20 who had no involvement with any issue in this case aside from being temporarily
21 appointed the trustee under the Deed of Trust. This Court denied Plaintiffs’ Motion to
22 Remand.

23 **Complete State Court Record:** Pursuant to the removal statutes, undersigned
24 counsel was required to file with this Court the complete state court record. This process
25 was time consuming because prior to removal, the case had been mired in litigation since
26 2010, and the state court record included not only documents filed with the superior court,
27 but also the Arizona Court of Appeals *and* the Arizona Supreme Court. Even after filing
28

1 thousands of pages, Plaintiffs' counsel insisted that the complete state court record had
2 not been filed, which was incorrect.

3 **Mediation:** Plaintiffs forced the parties to litigate the issue of whether or not a
4 representative of Ocwen could attend the mediation on behalf of the Trust. This required
5 Defendants to file a Motion for Order Clarifying Mediation Order and also required
6 undersigned counsel to procure declarations from Ocwen and DBNTC as Trustee
7 explaining the relationship and confirming that DBNTC as Trustee authorized a
8 representative of Ocwen to attend the mediation. The Motion for Order Clarifying
9 Mediation Order was granted. Plaintiffs walked out of the mediation after a generous
10 settlement offer was made to them that ended up being much more favorable than the final
11 judgment eventually entered in this case.

12 **Court Ordered Questions:** In light of Plaintiffs' unreasonable positions and bad
13 faith arguments regarding DBNTC as Trustee's lack of authority to enforce the Note, this
14 Court ordered DBNTC as Trustee to answer any questions Plaintiffs had regarding these
15 issues. Pursuant to this Court's orders, two detailed letters were sent to Plaintiffs' counsel
16 regarding these issues.

17 **Discovery:** Discovery was intense and time consuming. Undersigned counsel
18 prepared for and attended the depositions of Katrina Steinberger (in her individual
19 capacity, as personal representative of the Estate of Charles Perkins and as representative
20 of Saguaro Desert Trust), third-party witness Barbara Heggarty (a former roommate of
21 Katrina Steinberger), and 30(b)(6) witnesses for DBNTC as Trustee, Ocwen and CIT
22 Bank. Plaintiffs issued expansive depositions notices with 45 (CIT Bank), 50 (DBNTC)
23 and 48 (Ocwen) separate topics of inquiry to which Defendants objected.

24 More than 4,000 documents were produced by Plaintiffs that needed to be reviewed
25 and analyzed. Many of these documents were retrieved from the Securities and Exchange
26 Commission and websites used by DBNTC as Trustee to communicate with its certificate
27 holders and therefore had no relevance to any issue in this case. Notwithstanding,
28 undersigned counsel was still required to review and analyze all of these documents to

1 determine relevancy. In addition, since Plaintiffs refused to disclose relevant bank records
2 and tax returns, undersigned counsel was forced to issue subpoenas to all financial
3 institutions listed in Plaintiffs' original loan application and received thousands of pages
4 of bank records in response. Finally, there were hundreds of pages of documents related
5 to the original loan transaction, including the original "wet ink" documents, that
6 undersigned counsel needed to review and analyze.

7 In addition, Plaintiffs issued 77 separate written discovery requests to CIT Bank,
8 51 separate written discovery requests to DBNTC and 14 written discovery requests to
9 Ocwen. Undersigned counsel also issued written discovery of its own to Plaintiffs.
10 Finally, Plaintiffs issued third-party subpoenas to Wells Fargo, JP Morgan Chase, The
11 Northern Trust, Mellon Trust, Goldman Sachs, Credit Suisse, CitiGroup, Brown Brothers,
12 BONYM-Pershing, Barclay's and tried to depose Depository Trust & Clearing
13 Corporation but this Court determined that the deposition exceeded the scope of discovery.

14 **Discovery Disputes:** As this Court is aware, Plaintiffs initiated several discovery
15 disputes and lost all of them. For example, the parties submitted Joint Statements
16 outlining discovery disputes on 10/26/2015 (doc. 91), 12/10/2015 (doc. 101), 12/11/2015
17 (doc. 103), 12/29/2015 (doc. 119) and 03/17/2016 (doc. 151). In summary, Plaintiffs
18 engaged in "fishing expeditions" for documents related to the inner-workings of the
19 subject Trust, and documents related to the securitization of the subject loan, in order to
20 substantiate Plaintiffs' unfounded legal theory that no defendant could foreclose because
21 no defendant had the right to receive payments. Also, Plaintiffs took the position that
22 Defendants were not entitled to review bank records and tax returns of Plaintiffs, and this
23 Court eventually ruled that this position was incorrect. The fact that Plaintiffs did not
24 voluntarily produce bank records/tax returns required Defendants to issue subpoenas
25 which took more time.

26 **Expert Witness Issues:** Plaintiffs filed an untimely expert report from a
27 "securitization expert" and eventually an order was signed by this Court that this expert
28 was not allowed to testify due to the untimely disclosure. The untimely report produced

1 was 36 pages. Undersigned counsel was even required to file a motion to *enforce* the
2 order previously entered regarding expert witnesses when Plaintiffs continued to insist
3 they were entitled to rely on the expert opinion of the “securitization expert.” Also,
4 undersigned counsel was required to attend the physical inspection of the original loan
5 documents. After all of this, Plaintiffs eventually agreed not to contest the authenticity of
6 the loan documents.

7 **Joint Statement regarding Jurisdictional Issue:** In light of the US Supreme
8 Court case *Americold Realty Trust v. Conagra Foods*, this Court ordered the parties to
9 brief the issue of whether or not diversity jurisdiction still existed.

10 **Dispositive Motions:** Defendants filed their own motion for summary judgment,
11 which included several declarations. Defendants’ motion for summary judgment was
12 granted. However, Defendants also had to respond to a motion for summary judgment
13 filed by Plaintiffs, which was denied. The briefing resulted in a 40 page ruling from this
14 Court.

15 **III. ARGUMENT**

16 **a. Eligibility**

17 Defendants are eligible for attorneys’ fees pursuant to A.R.S. § 12-341.01 which
18 states in pertinent part that “in any contested action arising out of contract, express or
19 implied, the court may award the successful party reasonable attorneys’ fees.” Arizona
20 courts have “broadly interpreted” the statutory term “arising out of a contract.” *Marcus*
21 *v. Fox*, 150 Ariz. 333, 334, 723 P.2d 682, 683 (1986). A claim arises out of contract within
22 the meaning of A.R.S. § 12-341.01 as long as a contract “was a factor in causing the
23 dispute.” *Id.* at 335.

24 Here, there is no question that Defendants were the “successful” parties. As
25 evidenced by the final judgment (doc. 212) as well as the order granting Defendants’
26 motion for summary judgment and *denying* Plaintiffs’ motion for summary judgment
27 (doc. 210), Plaintiffs are to take nothing by way of the Second Amended Complaint, which
28 contained eight separate counts and 291 separate allegations. Further, for purposes of

1 determining the “successful” party, it is worth pointing out that DBNTC as Trustee
2 prevailed in its judicial foreclosure counterclaim and Plaintiffs’ attempts to avoid
3 foreclosure were defeated. In short, it would defy logic to call the outcome of this case a
4 victory for Plaintiffs.

5 Further, all issues in this case “arise” out of contract. All disputes stem from a
6 mortgage loan signed by Charles Perkins, and the rights of the parties based on that
7 contract. This included the rights of the defendant loan servicers (Ocwen/CIT Bank) to
8 collect payments, initiate foreclosure proceedings and record certain documents, the right
9 of MERS (who is mentioned in the loan documents as nominee for the original lender) to
10 record certain documents and the contractual rights of DBNTC as Trustee to enforce the
11 loan, amongst other rights. All of these disputed rights stem from the contract at issue in
12 this litigation – the loan signed by Charles Perkins.

13 Therefore, Defendants are eligible for an award of attorneys’ fees pursuant to
14 A.R.S. § 12-341.01.

15 **b. Entitlement**

16 Under A.R.S. § 12-341.01(A) this Court should consider the “merits of the
17 unsuccessful party’s claim, whether the claim could have been avoided or settled, whether
18 the successful party’s efforts were completely superfluous in achieving the result, whether
19 assessing fees would cause an extreme hardship, whether the successful party did not
20 prevail with respect to all of the relief sought, the novelty of the legal question presented,
21 and whether an award to the prevailing party would discourage other parties with tenable
22 claim from litigating legitimate contract issues for fear of incurring liability for substantial
23 amounts of attorneys’ fees.” *Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 569,
24 155 P.3d 1090, 1093 (App. 2007) (affirming trial court’s award of fees).

25 These factors should be weighed in light of the purpose of the statute. “Because
26 the statute provides that an award of fees should be made to mitigate the burden of
27 litigation, the clear intent of the statute is that under ordinary circumstances the successful
28 party in an action which falls under the statute is entitled to recover his reasonable

1 attorney's fees." *Grand Real Estate, Inc. v. Sirignano*, 139 Ariz. 8, 14, 676 P.2d 642, 648
2 (Ct. App. 1983) (vacating trial court's denial of request for fees).

3 All of these factors favor an award of fees to Defendants. First, over the course
4 this litigation, several settlement offers have been presented and rejected by Plaintiffs. For
5 example, Plaintiffs were offered \$25,000 cash *and* a loan modification during the court-
6 ordered mediation and they walked out. More recently, Plaintiffs declined an offer in
7 which Defendants would agree to *waive their right to seek attorneys' fees* if Plaintiffs
8 agreed not to appeal the judgment/contest the foreclosure. Plaintiffs refused all of these
9 reasonable settlement offers.

10 Further, as evidenced by the order granting Defendants' motion for summary
11 judgment, Plaintiffs' claims lacked merit. Notably, Plaintiffs continued to pursue certain
12 claims even after Plaintiffs learned information resolving any potential doubt as to the
13 legitimacy of the claims. For example, Plaintiffs argued to the Arizona Court of Appeals
14 that the original Note was "lost or destroyed." Based on this allegation, Plaintiffs asserted
15 that DBNTC as Trustee did not have "standing" to enforce the note. However, early in
16 this litigation, Plaintiffs were given the opportunity to inspect the original loan documents,
17 and even hired an expert witness to inspect the original loan documents to confirm their
18 authenticity. Even after Plaintiffs *stipulated* to the authenticity of the loan documents,
19 Plaintiffs *still* maintained that DBNTC as Trustee was not entitled to foreclose.

20 Finally, as set forth in Section II (above) a huge portion of the attorneys' fees in
21 this case could have been avoided if Plaintiffs had taken reasonable and tenable positions.
22 For example, Plaintiffs hired unnecessary experts and then disclosed their opinions in an
23 untimely manner. Plaintiffs issued invalid subpoenas that were quashed. Plaintiffs
24 refused to turn over bank records and tax returns that were eventually ordered to be
25 disclosed. Even issues that should have been relatively straightforward (such as removal
26 based on diversity jurisdiction) were overly complicated by Plaintiffs.

27 Therefore, Defendants are entitled to an award of attorneys' fees pursuant to A.R.S.
28 § 12-341.01.

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The best evidence of “reasonableness” is in the docket itself. The sheer volume of filings by Plaintiffs (many inappropriate and/or unnecessary), along with the length of each filing, combined with the fact that most of Plaintiffs’ motions were ultimately denied, is proof of the work required to defend against Plaintiffs’ claims against Defendants.

In light of the foregoing, Defendants respectfully request an award of \$116,656.70 against Plaintiff Katrina Perkins Steinberger in her individual capacity and against the Estate of Charles Perkins, jointly and severally.

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Barbara J. Forde
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s/ Paige R. Kleinwolterink
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